

Approved as Submitted: August 18, 2004

**CITY OF MORGAN HILL  
JOINT REGULAR REDEVELOPMENT,  
SPECIAL CITY COUNCIL,  
AND SPECIAL FINANCING AUTHORITY COMMISSION MEETING  
MINUTES – JULY 28, 2004**

**CALL TO ORDER**

Chairman/Mayor/President Kennedy called the special meeting to order at 7:01 p.m.

**ROLL CALL ATTENDANCE**

Present: Agency/Council/Commission Members Carr, Chang, Sellers, Tate and  
Chairperson/Mayor/President Kennedy

Late: Agency/Council/Commissioner Chang (arrived at 7:05 p.m.)

**DECLARATION OF POSTING OF AGENDA**

Agency & Commission Secretary/City Clerk Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

**SILENT INVOCATION**

**PLEDGE OF ALLEGIANCE**

At the invitation of Chairman/Mayor/President Kennedy, John Tarvin, president of Morgan Hill Rotary, led the Pledge of Allegiance.

**RECOGNITIONS**

Mayor Kennedy presented a Certificate of Recognition to John Tarvin, President of the Morgan Hill Rotary Club, in gratitude for the Rotary Club organization's contribution of the fencing and screening for the Community and Cultural Center Rose Garden.

**CITY COUNCIL SUBCOMMITTEE REPORT**

**OTHER REPORTS**

City Manager Tewes indicated that the Council will be having a conversation later on the agenda about water conservation. The discussion will be on the quantity of water available versus the quality of water which he periodically reports. He indicated that the City monthly tests for the contaminant perchlorate. He said that this month's testing results are that all wells except two did not detect perchlorate. The two wells that did detect perchlorate (Condit and San Pedro wells) were found to be at 4 parts per billion, less than the State action level. He said that staff also conducts weekly testing for other things such as bacteria. He reported that in 40 samples taken over the past month, for the first time, the City has had three of the samples show the presence of bacteria in the system. He informed the Council that staff

immediately increased the chlorination in the system and took samples that were read the next day that showed now presence of bacteria. Because of these initial results, the City is required by the California Department of Health Services to inform the Council of the testing results and to its customers in the form of a printed advertisement in the local newspaper which will explain in detail what he has stated. He indicated that there is no cause for alarm as the issue was addressed immediately and that there is no bacterial contamination in the City's water system. He stated that should there be any member of the community who has concerns about perchlorate or any other issues relating to the city's water that may affect their health should consult their health professional. He stated that the City would be placing an ad in the newspaper in the next couple of days providing the required notice.

### **PUBLIC COMMENT**

Chairman/Mayor/President Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Council Member Tate indicated that the next scheduled Council meeting will be August 18. He stated that on August 14, a significant event will be held in the community. He stated that the Guglielmo family will be honored at the annual Leadership Excellence Award dinner where they will be receiving this award. He encouraged individuals to purchase tickets, attend the event, and help honor the Guglielmo family as they are great contributors to the community.

Rocke Garcia, a local builder, informed the Council that he has been working with Scott Schilling and Dick Oliver on Ordinance No. 1641, the modified setback ordinance. He indicated that City Attorney Leichter has been working with his attorney to clear and rectify some of the issues that have come up. He stated that the modified setback dwelling units only apply to last year's Measure P allocations. If there is a project that has been designed with modified setbacks, they cannot be continued until Ordinance No. 1641 is amended. He requested that that Council provide policy direction that developers would not be required to submit both a modified setback dwelling units and attached units under Measure P or under any RPD submittals. He indicated that a pre Measure C meeting will be held and that he would be submitting an application for the balance of his project under the RPD as submitted before.

City Manager Tewes indicated that the underlying issue of Ordinance No. 1641 will be brought before the Council on August 18, 2004. If it is the Council's direction, staff would be happy to agendize the questions raised this evening for policy direction. He noted that the discussion of Ordinance No. 1641 is not listed on the agenda; therefore, the Council cannot give staff direction this evening.

Dick Oliver stated that it was his understanding, at 2 or 3 council meetings ago that there was discussion about the modified setbacks and that the Council unanimously approved an extension to the provisions of Ordinance No. 1641. It was his understanding that the extension was adopted at that meeting and that developers were told later that the ordinance had not yet been amended. If developers have to design two different sets of plans, it would result in doubling the work and incurring a great deal of costs. He said that developers are requesting that the Council provide policy direction to staff that the ordinance

amendment is forthcoming. He said that it may not be until September that the Council approves an amendment to Ordinance No. 1641. He noted that developers will need to submit Measure C applications by October 1. He indicated that developers do not have the time to produce both types of plans in the short amount of time available. He requested that the Council direct staff to accept Measure C applications with modified setback designs.

Nathan Benich requested that the Council approve a beach volleyball court at the recreation center. He stated that he is an avid beach volleyball player. He said that the dimensions and cost for beach volleyball courts would be insignificant and can be tacked onto the recreation center. It was his belief that the cost to construct a beach volleyball court would be approximately \$5,000 and would include the materials, labor and construction of the court. Adding a beach volleyball court would add one more sport to the residents of Morgan Hill, and tournaments could be held locally.

Mayor Kennedy informed Mr. Benich that it was his understanding that beach volleyball courts are planned as part of the outdoor sports complex.

City Manager Tewes indicated that the adopted plan for the Condit Road outdoor sports complex would include several beach volleyball courts. He stated that it would be appropriate to forward Mr. Benich's comments to the Parks & Recreation Commission as they are reviewing the outdoor sports complex master plan at this time. He said that staff would convey Mr. Benich's interest to this Commission

Mayor Kennedy noted that Bruce Tichinin was in attendance to address the Council under public comment. He indicated that there were a couple of items under the consent calendar that the Council would be discussing; one item being item 4 regarding agreements with special counsel. He felt that it would be appropriate for Mr. Tichinin to address the Council under agenda item 4 rather than under public comment.

No further comments were offered.

## ***Redevelopment Agency Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Agency Member Tate and seconded by Vice-chairman Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 1 and 2 as follows:*

1. **PRELIMINARY JUNE 2004 REDEVELOPMENT AGENCY FINANCE & INVESTMENT REPORT**  
**Action:** ***Accepted** and **Filed** Report.*
2. **EXPAND ELIGIBLE USES FOR THE SMALL BUSINESS FEE DEFERRAL PROGRAM**  
**Action:** ***Expanded** the Eligible Uses for the Small Business Fee Deferral Program to Include*

*the In-Lieu Water Fee.*

## ***City Council Action***

### **CONSENT CALENDAR:**

Mayor Kennedy requested that item 8 be removed from the Consent Calendar and that it was his understanding that item 4 would be removed from the Consent calendar.

City Manager Tewes informed the Council that staff has provided the Council with a supplemental report under item 7, noting that the fiscal impact indicates that the City has withheld liquidated damages from the contract and that these additional funds may be available for the cost identified in the report. He indicated that additional information has been provided and that the recommendation remains the same.

**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 3, 5-7 as follows:*

3.        **PRELIMINARY JUNE 2004 CITY OF MORGAN HILL FINANCE & INVESTMENT REPORT**

**Action:** ***Accepted** and **Filed** Report.*

5.        **VOTING DELEGATE FOR 2004 LEAGUE OF CALIFORNIA CITIES ANNUAL CONFERENCE**

**Action:** *1) **Approved** Appointment of Mayor Kennedy as the City's Voting Delegate, and Mayor Pro Tempore Sellers as the Alternate Voting Delegate, to the League of California Cities' Annual Conference; and 2) **Directed** the City Clerk to Complete the Voting Delegate Form and **Forward** Said Form to the League of California Cities.*

6.        **ACCEPTANCE OF MONTEREY ROAD/UNION PACIFIC RAILROAD (UPRR) UNDERCROSSING PEDESTRIAN AND BIKEWAY IMPROVEMENT PROJECT**

**Action:** *1) **Accepted** as Complete the Monterey Road/UPRR Undercrossing Pedestrian and Bikeway Improvement Project in the Final Amount of \$546,060; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.*

7.        **ACCEPTANCE OF THE CITY OF MORGAN HILL POLICE FACILITY PROJECT**

**Action:** *1) **Accepted** as Complete the Morgan Hill Police Facility Project in the Final Amount of \$1,813,000; 2) **Directed** the City Clerk to File a Notice of Completion with the County Recorder's Office; and 3) **Authorized** the City Manager to Negotiate, Prepare and Execute an Amendment to the Agreement with the Nicholson Company to Provide Additional Construction Management Services in an Amount Not to Exceed \$40,000; Subject to City Attorney Review and Approval.*

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#### **4. AGREEMENTS WITH SPECIAL COUNSEL**

Council Member Chang stated that she would be abstaining from participating on this issue. She excused herself from the Council Chambers.

City Attorney Leichter presented that staff report, indicating that there are three standard consultant agreements that the City enters into with special attorneys that the City retains to advise it on various matters. She stated that the aggregate amount of the three contracts is \$100,000, and that they have been brought before the Council for approval.

Bruce Tichinin stated that the Council proposes to spend approximately \$50,000 in public funds on an investigation that the Council first kept secret. The Council then rushed to get out a subcommittee report late Friday afternoon before a three day holiday weekend on the grounds that it wanted all the facts regarding this matter to be known as soon as possible. On the grounds that it was not public information, the Council refused to release the report prepared by the City's private investigator despite his official request and his statement to the Council that he needed a copy of the report to: 1) prepare for his defense against the proposal to condemn him and remove him from the urban limit line/greenbelt committee, 2) to refer him to the district attorney for criminal prosecution, and/or 3) refer him to the State Bar for discipline on his license to practice law. However, the Council condemned him on the basis of selectively releasing portions of the report that it has kept secret. He noted that the Council has been accused by an employee of a California Newspaper Association who is an expert on the Brown Act of having violated the law in all of the Council's prior secret meetings on this matter. The Council's response was to place on the public agenda the matter of paying for the secret report for the first time. By this response, he felt that it appears that the Council is signaling two things: 1) the Council agrees with the expert that the secret meetings were unlawful; and 2) the Council now intends to conduct all matters relating to this matter in public. He felt that the Council should now release to him and the public the investigators report and all documents in the City relating to this matter so that the public can see what it has paid \$50,000 for.

Mr. Tichinin stated that after reading the latest addition of the Morgan Hill Times, he was left with the impression that because the Council has incurred an additional \$50,000 in attorneys fees to keep the report secret, the Council may be intending to pay the City's attorneys for the continued effort to keep the report permanently secret. He requested that the Council immediately release the report and all the information the Council has on this matter. Further, he requested that the Council immediately finish the work of the subcommittee as it relates to him and cease what he believes is the Council's unconstitutional and retaliatory attempt to intimidate him in the exercise of his first amendment right to criticize the Council's conduct on this matter publicly and privately. He felt that this is what the Council is doing by taking no action on possible actions still left hanging regarding possible criminal referral and referral to the bar for discipline. He requested that the Council either resolve that he has violated no laws, that it would take no action to refer him, and that the matter is ended; or that the Council state the specific provisions of the penal code or rules of professional conduct for attorneys which it believes he has violated, the evidence that it believes shows these violations, how it does so and refer the matter to the State Bar or district attorney.

Council Member Carr stated that Mr. Tichinin has raised some interesting questions which he believes that the Council will now have to ask legal counsel to look into and respond. He noted that Mr. Tichinin has requested that the Council subcommittee immediately wrap up its work. He felt that an easy way to do so is for Mr. Tichinin to participate in this and cooperate with the Council subcommittee. It was his hope that Mr. Tichinin will be willing to do so in order to wrap up this matter.

Mr. Tichinin stated that he would have been happy to work with the subcommittee had it cooperated with him initially instead of blind sighting him. He stated that the Council has not sought his comments and that it now has the information it is going to get from him. It was his belief that the Council was stalling again.

Mayor Kennedy stated that the Council will refer this matter to special counsel engaged for this purpose and respond to the questions raised by Mr. Tichinin.

Council Member Tate indicated that he has no comprehension of how the comments made by Mr. Tichinin relate to the item on the agenda. He noted that a contract is on the agenda and therefore does not believe that the Council can discuss the matter.

Mayor Pro Tempore Sellers stated that it was his understanding that Mr. Tichinin was questioning the allocation of the expenditures on this matter.

Mayor Kennedy stated that Mr. Tichinin's request was submitted under public comment. As Mr. Tichinin was challenging the expenditure of funds, it was his determination that Mr. Tichinin's comments would fall under item 4, agreements for expenditure of funds for litigation.

Council Member Tate questioned whether the Council could discuss Mr. Tichinin's comments because he does not believe that his comments relate to the contract.

Mayor Pro Tempore Sellers stated that it is rare for the Council to pull contracts from the consent calendar as contracts are considered fairly standard/routine. The reason the contracts were pulled from the consent calendar this evening was to make sure that the public had an opportunity to weigh in on the matter. He said that there are a few items related to this action item that are germane and felt that the public had a right to know about them. He stated that the Council began receiving legal counsel and that it has the authority to retain legal counsel at a cost up to \$20,000, noting that the Council is exceeding this amount. Therefore, the Council felt it appropriate to develop contracts with special counsel in three different areas; the significant of which is pending litigation that the Council is concerned about. He felt that it was important that the public understand that there has been a lot of discussion with inaccurate information in the press the past few weeks. He stated that the Council had two law firms to which it sought advice for Brown Act issues. He indicated that both firms specialize in the Brown Act issues, are very clear of the law on what the Council is allowed to do/not to do. The Council has sought their advice repeatedly and to do otherwise would have been irresponsible. He stated that a 10-minute review by someone who works for an outside agency and is not familiar of the fundamental issues involved in this

case would not be sufficient for the Council to change its mind. He felt that everyone in the City of Morgan Hill would have found it highly unusually and very suspect of the Council to proceed in a direction that was adverse to what the City's legal counsel and the two different legal firms had advised the Council to do. He indicated that this is one of the major reasons these firms were retained. They have advised the Council on a variety of matters; noting that the firms have thus far kept lawsuits from being filed. He stated that the Council is confident that it will be able to resolve this issue in a way that is appropriate for the City of Morgan Hill and the community. He stated that a determination was made, on the part of the subcommittee, to attach a \$50,000 price tag to its activities. The Council felt that it was important that the public was made aware that there is going to be an amount of money to be expended on these activities. He felt that the Council did the responsible thing and presented an estimation of \$50,000 in associated legal costs. He said that costs would accumulate and that once the exact costs are known, they would be made public.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council, on a 4-0 vote with Council Member Chang absent: 1) **Approved** Three Agreements with Special Counsel; and 2) **Authorized** Mayor Kennedy to Execute Agreements.*

Council Member Chang resumed her seat on the Dias.

## **8. SPECIAL CITY COUNCIL MEETING MINUTES OF JULY 14, 2004**

Mayor Kennedy indicated that he asked that this item be removed from the consent calendar in order to make some corrections to the minutes.

City Clerk Torrez informed the Council that minor typos have been identified and that they have been corrected per the supplemental handout, incorporating one other typo identified by Mayor Pro Tempore Sellers. She requested that the Council approve the Minutes, as amended.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Approved** the Minutes, as amended.*

## ***City Council, Redevelopment Agency, and Financing Authority Commission Action***

### **CONSENT CALENDAR:**

**Action:** *On a motion by Agency/Council/Commission Member Tate and seconded by Vice-chair/Mayor Pro Tempore/Vice-president Sellers, the Agency Board/City Council/Commission unanimously (5-0) **Approved** Consent Calendar Items 9 as follows:*

## **9. SPECIAL AND REGULAR CITY COUNCIL, SPECIAL REDEVELOPMENT AGENCY,**

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**AND SPECIAL MORGAN HILL FINANCE AUTHORITY COMMISSION MINUTES  
OF JULY 7, 2004**

**Action:** Approved the Minutes as submitted.

## ***City Council Action***

### **PUBLIC HEARINGS:**

**10. ZONING AMENDMENT, ZA-04-07: DIGITAL-VENTURE PROFESSIONAL CENTER**  
(Continued from July 21, 2004)

Planning Manager Rowe informed the Council that it continued this item last week at the request of the applicant as they needed additional time to review the traffic report. He informed the Council that the applicant is requesting a further continuance of this item to August 18. The request for additional time is to allow the applicant and public works staff to address the questions and concerns that the applicant has raised. He recommended that the Council open the public hearing and then continue this application to August 18, 2004.

Mayor Kennedy opened the public hearing. No comments were offered.

**Action:** *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Continued the public hearing to August 18, 2004.*

## ***City Council Action***

### **OTHER BUSINESS:**

**11. STATUS OF THE RE-ESTABLISHMENT OF MEDICAL SERVICES.**

Mayor Kennedy opened the floor to public comment.

Joanne Allen presented the Council with an update on the status of the DePaul Health Center. She said that 11 of the 15 suites are occupied or reserved (over 70% occupancy). Medical services being provided at this time are: physical therapy, internal medicine, cardiology, family practice, pediatrics, and orthopedics. There are time shares for specialist as well as an office for digital imaging, diagnostic, and laboratory services. She indicated that they have been talking with a radiologist in conjunction with St. Louise Regional Hospital about diagnostic imaging. She stated that services to be provided under Phase I are diagnostic imaging and the medical offices. She said that they are in current discussions with two groups for ambulatory/urgent care services. Being investigated is the possibility of outpatient services which would include: diagnostic imaging, laboratory, radiology, sports medicine and laboratory surgery (an outpatient surgery center). She stated that they are putting together the final touches on a feasibility



study and is working with a consulting firm to finalize a business plan that strategically links St. Louise, O’Conner and the DePaul Health Center. She indicated that they are excited about the progress made to date. She informed the Council that most of the tenants have moved in or are moving in and that tenant improvements are occurring. She stated that a conference center has been completed and was made available to Leadership Morgan Hill. She indicated that the conference center will be made available to the public for health education and that physicians would be giving health education series.

Mayor Kennedy congratulated Ms. Allen and the O’Conner staff for their accomplishments, noting that it has been only a year since Ms. Allen has come on board. He indicated that the City appreciates the work that she has done with the medical office building at the DePaul Health Center in restoring Medical services.

No further comments were offered.

**Action:**        *By consensus, the Council **Accepted** the Presentation Regarding Re-establishing Medical Services at the Former Saint Louise Hospital Campus.*

## **12.    MEDICAL SERVICES POLICY AND OBJECTIVES.**

City Manager Tewes presented the staff report, indicating that for approximately six years, the Council has been actively involved in the expansion/preservation of medical services in the community. In April 2000, the Council adopted a series of policy objectives and that at the most recent Council annual retreat, it was suggested that the policy statement be reviewed, updated, and revised as necessary. He stated that the Council appointed a subcommittee consisting of Mayor Kennedy and Mayor Pro Tempore Sellers who are recommending this evening a new formal policy document entitled “Policy and Objectives.” The Policy and Objectives include a policy statement and incorporates a series of long term and short term objectives, including a new section regarding City government’s role.

Mayor Kennedy indicated that the changes proposed are not major and felt that the policy statement is up to date and consistent with the plans that the Morgan Hill Community Health Foundation and the Daughter’s of Charity, under O’Connor Hospital, are working on. He said that urgent care is an important medical activity that the Daughters of Charity are working on, and that they would be bringing this to fruition soon.

Vice-chairman Sellers concurred that the goal was to take what had become a somewhat convoluted series of proclamations on the part of the City. The subcommittee distilled them in order to make sure that the Council was clear about its objectives/policies to the community. He felt that it was important to include a statement and make it clear what the City’s role is, part of which is to define what it had done. He noted that there is a reference in the last of the four sections that talks about the potential of facilitating a special district or the establishment of a new funding source. The subcommittee is suggesting that the Council take its lead from the Community Health Foundation as needs are identified. He did not believe that the subcommittee is proposing that the Council take any action this evening or in the near future, but rather that the Council continue to work with the Community Health Foundation and

identify resources that might be needed to further facilitate medical services.

Mayor Kennedy opened the floor to public comment.

Joe Mueller said that in looking at the medical center to move forward it needs to be understood that you need to look at a full range of services and that they be optimized. When the City looks at land use issues, it needs to be understood that profitable medical services help pay for none profitable medical services. How the City builds critical mass in the next few years will be critical. While the City is making progress, he did not believe that medical services are there yet and everyone needs to be conscience of this as medical services move forward. He noted that there is a synergy created by having uses locating close together. He felt that it was important to site medical services in areas that will take advantage of future growth.

No further comments were offered.

Council Member Tate stated that he likes the work that has been done by the subcommittee. He noted that the first page of the report states how the City got to where it is today, indicating that the City had a hospital that closed down because it provided more services than what was needed. He recommended that the policy statement reflect this fact. He felt that the policy statement states that the goal is to recruit anyone who can provide medical services. He did not believe that the City wants to overdue medical services to the point where there is competition that drives medical service providers out of business, loosing medical services again. He recommended that the policy statement include a statement that there has to be a balance of medical services. He inquired whether the City wants or needs more than one urgent care facility. The same question applies to laboratory, radiology and ambulatory surgery centers. He felt that a problem would be created if the community recruits medical services that would drive others out of business and that the community would loose out overall.

Mayor Pro Tempore Sellers stated that Council Member Tate's recommendation of making reference on how the City got to this point should be the first sentence, talking about the fact that Morgan Hill has suffered as a community due to a loss of a major medical facility. It could further be stated that the City is currently in the process of revitalization and reinstituting the facility followed by the sentence "...in order to guide the City of Morgan Hill supporting medical services." He indicated that it could be stated that the Council is anxious that it does not create an atmosphere where there is too much competition that ends up being at odds with the objectives contained in the policy. Another action the Council can take is to not explicitly state this goal but that it be an understanding that it will continue to be a goal. He indicated that the reason the subcommittee stated "one or more" was due to the fact that it did not want to preclude opportunities.

Mayor Kennedy indicated that at the last Morgan Hill Community Health Foundation meeting, there was discussion about the situation of competing facilities. He felt that these were issues more in the realm of the Health Foundation to provide the Council advice and direction. It was his belief that the role of government/Council in this case is not so much as to restrict competition or to make strong statements favoring one service over another as this is the role of the Health Foundation working with

the Daughters of Charity and other medical services providers. These groups can provide advice and direction to the Council. The Council can use this information as a means of achieving Council Member Tate's objectives. He agreed that a preface statement, talking about how the City got here would be helpful and would provide this history to future Council's. Therefore, he would support adding a preface/preparatory statement that talks about how the City got to this point.

Mayor Pro Tempore Sellers referred to short term objective number 2 recommending that "one or more" be deleted retaining "conveniently located..." He referred to the fourth bullet located at the bottom of the page. He noted that the first bullet reads "laboratory, radiology clinical services" and then talks about "and ambulatory one or more additional." He recommended that this be amended to read "laboratory, radiology, and clinical." Second bullet to read "ambulatory surgery centers." The third bullet to state "skilled nursing facility" followed by the fourth bullet point to read "physical therapy." These amendments would not place quantifiers to any of the bullet points.

Council Member Carr felt that it could be as simple as word smithing under the medical services policy. He recommended that it be stated that the City wants to encourage an appropriate amount of medical service providers. He felt that the short term objectives should be short term. Therefore, he did not believe that the ability to attract two urgent care centers in the next two years would be feasible. He recommended that the Council discuss minimum activities under short term objectives as addressed by Mayor Pro Tempore Sellers. Under long term objectives, he said that item 3 could discuss the appropriate expansion of the short term objectives such as the right time to have an additional ambulatory surgery center and skilled nursing facility, noting that these are long term objectives to expand upon the short term objectives.

Council Member Tate addressed the role of local government, referring to the second paragraph, the sentence that reads "Physician recruitment remains the City's top priority." In listening to Ms. Allen, he was under the impression that perhaps urgent care was moving up to top priority. He inquired whether the Council wants to include/identify in the policy its top priority. He acknowledged that the priority(ies) would change over time.

Mayor Pro Tempore Sellers clarified that the second paragraph references the funds that have been allocated to date. He said that the subcommittee included this statement because it wanted to make a specific reference. He indicated that when the Council allocated the funds, it specifically stated that the funds were to be used for physician recruitment and therefore, the statement reiterates this point.

Mayor Kennedy said that as the City has spoken to various medical providers, it was felt that the number one way of restoring medical services is to bring additional primary care physicians to the area/facility, as they will bring on board all of the other ancillary services.

Council Member Tate supported Mayor Pro Tempore Sellers' recommendation of clarifying that it was the Council's priority to recruit primary care physicians to get medical services started. However, he felt that the priority may change over time. He felt that when someone reads the medical services objectives 10-years from now, it may be felt that physician recruitment remains the top priority.

Mayor Kennedy clarified that the goal to recruit primary care physicians was for the dollars that have been expended.

Council Member Carr noted that the Medical Health Foundation still has money that the Council allocated 2+ years ago where the Council stated that these dollars were to be used for physician recruitment.

Council Member Tate noted that the objectives discuss raising other funds through public means. It may be that the top priority for these funds may be physician recruitment. He stated that he would like the objective phrased in a manner that states that the top priority will change in the future.

Mayor Kennedy recommended that the word “remain” be replaced with the word to “currently” or “presently is the City’s top priority.”

Council Member Tate supported this modification. He stated that he would prefer not to include the last paragraph. He felt that as proposals come forward from the Health Foundation, the Council will entertain the proposals and make decisions as they come forward.

Mayor Kennedy and Pro Tempore Sellers supported deleting the last bullet point.

Council Member Chang stated that she supported Council Member Tate’s comments about balance and including a statement of how the City got to this point. She would like it to be stated that the Council wanted to achieve viable medical services in the future and that there not be too many medical services provided such that medical services is no longer viable and lasting.

Council Member Carr concurred with Council Member Tate in the recommendation to delete the last paragraph.

Mayor Pro Tempore Sellers inquired whether it would be the preference of the Council that the subcommittee go back and rework the medical services objectives, returning with the changes for Council approval, indicating that he did not want to prolong the process.

Council Member Tate suggested that the subcommittee return with the identified medications to the Council on its consent calendar.

Glenda Garcia indicated that she serves on the Medical Services Health Foundation as well as serving on the Citizens Advisory Board. She stated that she concurred with some of the statements expressed by Council Member Tate. She felt that there was an unbelievable future with the Daughters of Charity’s envision for the hospital site. She stated that there is a lot of activity taking place and that there is a great commitment from the Daughters of Charity to get the medical services moving forward.

**Action:**        *It was the consensus of the Council to direct the subcommittee to make the identified*

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*modifications to the medical services policy and objectives.*

### **13. WATER SUPPLY SHORTAGE OPERATIONS PLAN.**

Director of Public Works Ashcraft presented the staff report. He indicated that the City is continuing in a water supply condition where the demand is close to exceeding supply mainly caused by the perchlorate contamination problem. He said that the perchlorate contamination has hampered the City's effort to find new wells because so much of the valley floors are contaminated or could be contaminated with perchlorate. Therefore, it is difficult to find a site for a well. He informed the Council that staff has a draft water conservation plan that suggests four stages of emergency, indicating that the first stage would be called urgent, a state where the City finds itself at this time. He informed the Council that this stage forced the City to turn on a well that has been off over 1.5 years due to perchlorate readings, although it did not exceed the action level. He indicated that now that the Dunne 2 well has been on for the past 2 weeks; the City is able to meet the community's water demand. He stated that the City cut back all of its park irrigation by 50% the past two weeks. He did not believe that there was any doubt that the City would go over the demand it is experiencing before the summer is out. Stage 2 would be a critical condition where the City would cut parks irrigation by the remaining 50% and turn on the Main 1 well for a short term. The spray ground at the aquatics center would be turned off and that the City would be asking its largest irrigation users in the community who have volunteered to help the City to cut its irrigation demand by 50%. These actions would result in reducing peak demands by approximately 1 million gallons per day. The emergency stage would be a situation where the City would have to eliminate the parks irrigation, keep the spray ground off and institute mandatory measures that could include turning off the largest water meters in the City's irrigational accounts. He stated that these actions would greatly reduce the total demand.

In response to Mayor Kennedy's question, Mr. Ashcraft indicated that the City's water master plan projects water usage out through the build out of the General Plan (2025-2030). He stated that the water master plan states that the City needs one new well every five years and three wells producing approximately 1,000 gallons per minute that will meet the City's build out demand. However, staff has recently learned that perchlorate contamination has greatly hampered the City's ability to site new wells and has placed a few wells out of service. Therefore, it is the perchlorate contamination that is affecting the City's existing wells as well as affecting the City's ability to site new wells.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:** *On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Tate, the City Council unanimously (5-0): 1) **Approved** the Draft Plan and 2) **Directed** staff to return to Council with the required resolution making emergency findings to implement the plan to protect public health and safety when water shortages occur.*

## ***Redevelopment Agency Action***

### **OTHER BUSINESS:**

#### **14. ROYAL COURT HOUSING PROJECT**

Director of Business Assistance and Housing Services Toy presented that staff report, indicating that staff and South County Housing are requesting direction on the revised design concept for the Royal Court Housing project, specifically on four key issues: 1) saving the Royal Court motel buildings and moving them to the northeast corner of the site, incorporating the units into studio apartments and the elimination of the commercial portion of the project along Monterey Road; 2) reducing the townhomes from 16 units to 12 units; 3) the overall design of the project (proposing a craftsman style where the units located along Monterey Road are of a bungalow design); and 4) recognition that the project will require variances to the existing zoning in order to maintain project densities. He indicated that the Planning Commission appointed a subcommittee who has worked with staff and South County Housing in the review of the design, and are supportive of the project. They will work closely to help address the variance issues. He informed the Council that the Shell Gas Station is not a part of the project at this time. He stated that the City talked at one point about trying to acquire the gas station site but that the property owner did not express an interest in selling it. He indicated that staff will talk to the property owners once again to see if they are interested in selling the property as the use has closed down.

Jan Lindenthal informed the Council that the South County Housing design team met with the Planning Commission subcommittee 1.5 weeks ago. She indicated that one of the Planning Commissioners mentioned that the gas station was listed for sale. She contacted the property owner, indicating that the property owner received four proposals. As all offers were over the asking price, the property owner did not accept any of the offers and raised the sale price 1/3 higher than the original asking price. She said that it may be apparent that a gas station at this corner is desirable and therefore there is not an opportunity to compete against the sale price.

Ms. Lindenthal walked the Council back to where South County Housing started in the design of the project. She said that when the issue of the potential historic significance of the Royal Court Motel came up, a study session was conducted with the Council in April 2004. At that time, the Council reviewed two alternatives: 1) keeping the motel in its current location or 2) moving it on the site. The Council raised several issues at that time. One issue was the relationship between the buildings and how to make them work. Another issue was the density of the 16 townhomes to be sited along Del Monte Avenue. She stated that she met with the Historical Society and that it was the consensus of this group that the buildings were historic. She informed the Council that it is difficult to design several studio apartments due to financing as it would result in the rest of the apartments being 2-3 bedrooms. The Historical Society suggested that South County Housing save a portion of the historical buildings in order to retain the historic character. She said that if there were some acceptable tradeoffs that you would get from this in terms of usable open space and a better unit mix, that it would make the project financially feasible. She addressed various design scenarios. She stated that the design team met with the Planning Commission subcommittee in order to receive their input. She indicated that there was a difference in

opinion about preserving existing buildings. Concerns raised by the Planning Commission subcommittee include the following: usability/quality of the open space on site; circulation; and transition from Monterey Road to the interior of the site. She informed the Council that the subcommittee recommended that she consider removing one or both of the larger elm trees located on site in order to create a better site layout for the single family homes. He indicated that it is being proposed to go from 16 townhomes to 12 modified attached homes. It was also suggested that rather than building out all of the required parking under the City's zoning ordinance, that she look at building out only the parking that is needed and reserve the rest in landscaped area. She informed the Council that this is something that she has done twice in Santa Clara County with great success. In projects that South County Housing has developed, she has not found with the reduced parking areas are fully parked on site. She indicated that surveys were conducted during the day and evenings to see how many parking spaces are actually used. It was found that on average; only 2/3 of the parking provided was utilized at peak times. She felt that there was an opportunity to look at the site plan and create reserved parking, creating an opportunity that is a win win situation for all. If parking is needed, the open space can be converted to parking spaces.

Ms. Lindenthal informed the Council that the Planning Commission subcommittee expressed concern regarding the location of a parking lot. It was suggested that a building be moved over, siting the parking in the middle of the project in order to improve circulation. Two plans were designed in response to the subcommittee's recommendation. She requested Council direction in order to proceed with the planning approval process. She said that it is South County Housing's recommendation that the Council allow them to proceed with the 12-detached single family homes as part of phase I and then proceed with a version of a plan for the rental component of the project where they take a more careful look at the reserved parking areas and how best to maximize parking. She said that South County Housing would set aside funds needed to pave the parking areas in the future if a parking survey found that parking is tight. She presented the Council elevations of the modified attached homes proposed along Del Monte Avenue and elevations for the Monterey Road six plex apartment units. She felt that she has a successful solution to preserving the existing buildings; coming up with a new building adjacent to the existing buildings that bring forth the best elements of the Royal Court Apartment buildings.

Chairman Kennedy noted that the existing Royal Court apartment units have curves in the roofline/garage door lines. He did not see this element incorporated into the proposed new units.

David Sinden, KTGJ Architects, indicated that he was trying to design a building that was compatible but not trying to copy the existing design. He said that there are certain elements in the hotel that he did not incorporate into the design and vice versa. It was his belief that the buildings were compatible and would be nice neighbors as they are of a similar scale and massing. He informed the Council that the buildings would not have the appearance of a flat roof. He said that the roof would have a parapet and a sloped roof behind the parapet to mitigate drainage.

Vice-chair Sellers noted that it is being proposed to eliminate some of the existing Royal Court apartments, retaining what South County Housing could, pulling them closer together. He requested an

overview of what is being proposed for the buildings.

Ms. Lindenthal said that what is being proposed is to take two units off the back of each building and shift them to the front of Monterey Road. She would keep the appearance of a garage door but that it would be living space in the units. She clarified that the units would remain as studios but that the units would be larger than they are at this time, encroaching into the garage space. She stated that the key is to retain the exterior design.

Agency Member Tate inquired whether the project could be reconfigured in order to add a couple of bedrooms.

Chairman Kennedy inquired whether it was felt that the Council was asking for something that will not work. In reviewing the design alternative, he did not believe that the historical significance of the units is being saved. He did not believe that the design is accomplishing the Council's objectives.

Ms. Lindenthal indicated that one of the Planning Commissioners serving on the subcommittee suggested that either all units be saved or that none of them be saved. She stated that when she met with the Council in study session, it was the consensus of the majority of the Council that there was an opportunity to preserve a piece of Morgan Hill's history. She indicated that this was the significance of the existing buildings and not their architectural character. Everyone agreed that there has to be a historical way to tie the project to the Royal Court motel. Given this direction, she felt that she has come up with a successful solution and felt that the project would work. She stated that the two buildings, oriented as proposed with a courtyard in between, will provide a nice environment. She expressed concern with what may be found when the buildings are lifted in order to move them. It could result in not being able to save the buildings, resulting in the reconstruction of the units as was done at the Skeels Hotel. She informed the Council that there are 10 units that are historic in nature contained in the five unit buildings. She noted that the other buildings on site have no significance and will be demolished. She informed the Council that South County Housing has almost vacated the entire Royal Court Motel, with families receiving relocation benefits. She indicated that she would like to proceed with the planning approval process, noting that she has a long way to go. She indicated that the elimination of the commercial space makes the project financially feasible as the commercial space cannot be underwritten for purposes of sizing a permanent loan. It was felt that a mixed use building could work, not withstanding this. She said that the reconstruction of the existing units would be more financially feasible. She acknowledged that the mixed use space character would be lost on Monterey Road with the elimination of the commercial space.

Chairman Kennedy noted that it is being requested that South County Housing be allowed to save six units as modified, reducing the number of townhomes from 16 to 12, approval of a craftsman style design as presented this evening, and consideration be given to the variances needed to complete the project.

In response to Agency Member Carr's question, Ms. Lindenthal indicated that thought was given to converting the Royal Court apartment studios into commercial space and saving the facade. There was a



challenge of not being able to change the exterior because it would lose its historical character. It would not result in viable retail space as no one would know that the business exists based on the inability to install windows large enough to know that a commercial business exists. Also, the buildings could not be oriented toward the street and that the building would have to be perpendicular to the street. It was concluded that this would not be a viable solution. She indicated that a conclusion was reached that if they had to preserve the existing buildings, the commercial component would need to be eliminated because it would not work. In order to make the commercial use work, a two story building would need to be designed with retail on the ground floor and residential units above. She noted that parking was an issue as well.

Agency Member Carr stated that it was disappointing to lose the commercial aspect of the design as this was one of the enticing and exciting part of the project; keeping some of the mixed use along Monterey Road that is discussed in the newly adopted General Plan. He felt that the Council needs to figure out how commercial can be incorporated into the project, especially with Ms. Lindenthal's thoughts on how to reduce some of the parking demands. Therefore, it may be that parking is not a big issue any longer. He stated that the massing and scale next remains an issue but felt that the City can figure out a solution to incorporate commercial space in the project.

Ms. Lindenthal stated that the project cannot have it all. If you are going to preserve Royal Court, it places a substantial burden on the project in terms of all of the potential logistical issues associated with moving and reconstructing the buildings. She felt that South County Housing would be asked too much to try and convert the building into a mixed use, incorporating commercial space.

Vice-chairman Sellers felt that everyone is struggling with achieving a balance. He noted that the Historical Society weighed in on the review of the project and felt that Royal Court was worth preserving. He felt that the Council needs to understand that incorporation of commercial space in the project would be a battle to be undertaken. He stated that he shares the desire to have commercial along Monterey Road from the railroad tracks to Main Avenue. He noted that this stretch of Monterey Road has residential, commercial and mixed use interspersed. Therefore, it would not be an aberration to have residential along Monterey Road. He said that preserving the buildings in their current form, reducing the buildings by four and moving them closer together appears to be a good idea in order to make the project viable. He liked the parking idea in particular. He stated that he was anxious about the parking availability on Del Monte. However, he felt that the parking would be sufficient for 30 units. He requested that the roof material be toned down as the drawings appear to be massive. If parking spaces can be reduced, he felt that the public/open spaces would be valuable and would make it a precedent for subsequent projects in Morgan Hill. Therefore, he would be anxious to see how well this works and recommended that the parking/open space be monitored.

Agency Member Tate stated his concurrence with the comments as expressed by Vice-chair Sellers. He said that he was not enamored with the hotel but given that there is a constraint of retaining the Royal Court apartment units, he felt that everything that South County Housing has done is the best possible solution for the site. He supported the mixed use concept but that he did not see how it can be incorporated, especially if you cannot tie in the motel. It was his opinion that South County Housing was

on the right track.

Chairman Kennedy agreed with the comments that have been made, especially if you can use the open space for future parking. If the City is able to approve the variances necessary, it would allow the project to retain the open space, monitoring the parking needs. If it is found that additional parking is needed, the open space could be converted into parking. He said that this was a tough project to deal with and that under the circumstances, he felt that the City got the best design that it could hope for in the project presented this evening.

**Action:**        *No action taken. Council comments as provided above.*

## ***City Council Action***

### **OTHER BUSINESS: (CONTINUED)**

#### **15. STATUS OF TRANSPORTATION IMPACT ANALYSIS FOR THE DOWNTOWN PLAN**

Planning Manager Rowe presented the staff report, indicating that the City's environmental consultant recommends that the Council hold a workshop during the 30-day public review period that will begin on October 8, 2004 to review the results of the transportation analysis in context with all the other environmental issues as opposed to looking at the traffic study separately. He recommended that the Council schedule a workshop between October 8 and November 12 to review the recommendations.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Mayor Pro Tempore Sellers noted that funding has not been identified for the implementation of traffic calming measures should the Council decide to implement these measures (e.g., reducing Monterey Road to one lane in each direction). He inquired whether the analysis/study would provide the Council with an idea of what it would cost to implement traffic calming measures.

Planning Manager Rowe responded that the report to be presented to the Council would include cost estimates for the various alternatives for lane closures and other traffic calming means that can be used.

City Manager Tewes informed the Council that the adopted Redevelopment Agency budget has set aside \$100,000 for the implementation of traffic calming measures on Monterey Road. He noted that this is a minimal amount. However, if it is the Council's direction to only set up delineators and perform some stripping, this funding can accomplish these measures. Among the options to be considered at the workshop is not just whether to restrict the lanes to one in each direction but how to do this.

Mayor Kennedy felt that it was important that the Council move quickly on this item as it is something that could improve the viability of the downtown.

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**Action:**        *On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Directed** staff to schedule a workshop on October 13, 2004 at 6:00 p.m. to review the results of the traffic study for the Downtown Plan.*

**16.    URBAN LIMIT LINE STUDY: CITY COUNCIL PARTICIPATION IN STUDY PROCESS**

Contract Planner Bischoff presented the staff report. He said that by September 2004 there should be a preliminary recommendation from the Urban Limit Line Advisory Committee available for Council review. He stated that the Committee felt that this would be a good time to check in with the Council and receive its feedback as to whether or not the Committee and subcommittee are heading in the right direction. He informed the Council that by November the full committee will have completed its work, looking at greenbelts throughout the City as well as various implementation measures for the greenbelts. The Committee will have completed its work on the southeast quadrant of the city as well. It is at this point that staff/committee will develop a draft package of recommendations on the overall greenbelt plan before going out for public comment on the work that the committee has done. Should the Council agree that the committee is heading in the right direction; the City would hold a public workshop and actively solicit participation from individuals throughout the community to receive feedback on the plan. He indicated that it is being recommended that there be two points of Council involvement: 1) in September as a regular agenda item; and 2) a November 2004 workshop in advance of a regular City Council meeting.

Mayor Kennedy opened the floor to public comment. No comments were offered.

**Action:**        *On a motion by Council Member Tate and seconded by Council Member Chang, the City Council unanimously (5-0) **Accepted** the recommendation of the Urban Limit Line Advisory Committee for City Council participation in the Urban Limit Line study process.*

**17.    APPOINTMENT TO THE CITY'S NOVEMBER 2006 CENTENNIAL PLANNING STEERING COMMITTEE.**

Mayor Kennedy recommended that there be an entire year of celebration.

Council Member Tate indicated that he was asked by his recommended appointee as to the time commitment. He indicated that the Historical Society is planning to start the celebration in November 2005 with a year's worth of celebration activities leading up to November 2006. He stated that the Historical Society would conduct the planning of the activities, noting that there would be multiple activities. This was his understanding of what the Council would be asking the appointees to undertake.

Mayor Kennedy recommended that the Council appoint a 7-member steering committee. This committee is to start the process of what the plan is to be. This would include an organization, a timeline, and identifying the goals and plans for the celebration. He felt that the committee would be

developing a plan for the planning of a year long centennial celebration. He felt that a formal celebration committee would be along the line of with what the IDI organization does. He indicated that the organization would have different groups conducting different parts of the preparation of the centennial celebration. He felt that all segments of the community need to be a part of this organization. He felt that this would include groups such as the Chamber of Commerce, churches, ethnic communities, Sister Cities committee, and the various service clubs (e.g. Rotary, Lions Club, etc.). He felt that it would be good to have an advisory committee of the Historical Society founding members of the community such as Elena Moreno, Carol Holzgrafe, Anita Mason and others who often attend the Founders Day dinner. He looks at this as a much broader celebration than just the historical celebration; it's a celebration of the entire community. It would be the steering committee's role to put together the plan for the plan. He suggested that the steering committee return to the Council with recommendations by December 2004 of how to structure the plan, the organization and the timeline. He recommended that Brad Jones, Marilyn Libers and Jennifer Tate be appointed to the centennial planning steering committee.

Council Member Chang indicated that she would recommend the appointment of Lorraine Welk. However, she would reserve the right to be able to appoint a different person should Ms. Welk decide not to undertake this assignment.

Council Member Carr indicated that he has spoken to a couple of individuals but that he is not recommending appointment at this time as there are outstanding questions. He said that the structure as outlined by Mayor Kennedy is different from what he was thinking about a celebration. He inquired why Council Member Tate contacted a representative of the Historical Society to find out their thoughts on how to plan for the City's centennial celebration. He said that there may be other groups that are planning a centennial celebration that the City is not aware of. He felt that there may be other things that the Council needs to think about before asking individuals to proceed with work. If the Council is to appoint individuals to a committee, he inquired whether the Council would be providing funding. He stated that he would hate to ask someone to do something where they did not have a lot of support. He felt that there were a couple of things that the Council needs to think through before sending a group off to undertake a task.

Mayor Kennedy indicated that it would be his request that there be two members of the City Council serving as liaison to the committee. The City is to provide a meeting place and a staff person to attend the meetings. He did not believe that funding of the steering committee is necessary at this point. He said that it may be a part of the mission of the steering committee to establish a budget for the entire centennial program. He would like to see the centennial celebration planning started. He does not envision the mission of the steering committee to conduct the entire planning and perform the entire work, but to put the plan in place, the timeline, the budget, and the organization. The steering committee is to report back to the Council with their recommendations on how to proceed.

Mayor Pro Tempore Sellers said that this information has been helpful. He indicated that he has not made a final selection of a recommended appointment as he wanted to get a sense of what he would be asking someone to do. He recommended that appointments be forward to the City Clerk.

## OPPORTUNITY FOR PUBLIC COMMENT

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Chairman/Mayor Kennedy opened the Closed Session items to public comment. No comments were offered.

**ADJOURN TO CLOSED SESSION**

Chairman/Mayor adjourned the meeting to Closed Session at 9:25 p.m.

**RECONVENE**

Chairman/Mayor Kennedy reconvened the meeting at 9:54 p.m.

**CLOSED SESSION ANNOUNCEMENT**

Mayor/Chairman Kennedy announced that no reportable action was taken in closed session.

**ADJOURNMENT**

There being no further business, Chairman/Mayor Kennedy adjourned the meeting at 9:55 p.m.

**MINUTES RECORDED AND PREPARED BY:**

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**IRMA TORREZ, CITY CLERK**  
**AGENCY/COMMISSION SECRETARY**